IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1704 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE R.P.DHOLAKIA

HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge?

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GULAM MOHAMMAD @ GULAL ABDUL KADAR SHAIKH - Appellant(s)

Versus

THE STATE OF GUJARAT - Opponent(s)

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Appearance :

MR IM MUNSHI for Appellant(s) : 1,
MR AZIZ AN ALVI for Appellant(s) : 1,
MR RC KODEKAR, APP for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.P.DHOLAKIA
and
HONOURABLE MR.JUSTICE MD SHAH

Date : 21/02/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE MD SHAH)

1. This appeal has been filed by the appellant-the original accused challenging the order dated 23-8-2004 passed by the learned Special Judge (POTA), Ahmedabad, in Criminal Misc.

(Bail) Application No.2219 of 2004 in connection with I.C.R.No.6 of 2003 of DCB Crime Police Station, Ahmedabad City, presently numbered as POTA Case No.12 of 2003 whereby the application filed by the appellant for bail was rejected.

2. This application filed in October, 2004 could not be disposed of by the High Court till date and ultimately it has been reflected in our board as per the present roster.

3. When this matter was taken up for hearing on last adjournment i.e. on 31-1-2006, the learned counsel for the appellant has requested that since the proceedings initiated by one of the co-accused before the Apex Court regarding connectivity of POTA are pending, hearing of this appeal may be adjourned till 20-2-2006. Hence, the hearing of appeal was adjourned to 20-2-2006.

4. Today learned counsel for the appellant, Mr.Aziz A.Alvi has requested that now he may

be heard and matter may be disposed of on merits. Hence, we have heard him and also Mr.R.C.Kodekar, learned APP for the respondent-State at great length.

5. It is mainly submitted by Mr.Aziz A.Alvi that except the confessional statement of the accused recorded under Sec.32 of the Prevention of Terrorism Act (hereinafter referred to as “the Act” for short), there are no other evidence on record to connect him with the crime in question. Even if the said statement of the appellant-accused is believed to be true, then also, there is nothing in his statement to connect him with the crime. He has taken us through the reasoned order passed by the court below in Cri.Misc.Appln.No.2219 of 2004 together with the statements of other accused and submitted that in the absence of any other prima-facie evidence on record to connect him with the crime in question, the appellant may be

released on bail.

6. Learned Addl. Public Prosecutor, Mr.R.C.Kodekar, has taken us through the prosecution case together with the reasoned order passed by the court below more particularly paragraph Nos.15 and 16. Taking us through the relevant panchnama of search, he has submitted that revolver along with live cartridges were recovered from the appellant during his search. He has taken us through the statements of various other witnesses namely, Mustaq Ahmed Abdul Sattar Shaikh, the person working as land and building broker in Sanand Taluka connecting Ahmedabad City, Abdul Rehman @ Chhotalal Ahmedmiya Saiyyed and Tanvir, etc. It is further submitted that law is well settled that when confessional statement of the accused recorded under Sec.32 of the Act is found to be prima facie reliable, the prosecution does not require any further

evidence to establish his involvement. Here in this case, over and above the confessional statement, there are other ample evidence on record connecting him with the crime and, therefore, according to him, since the present appellant is found prima facie to be one of the prime accused actively involved in the crime in question, he should not be released on bail. Since the order passed by the court is just, legal, proper and well reasoned, it is submitted that same may not be interfered with.

7. We have gone through the rival contentions raised by the learned counsel for the respective parties along with the evidence shown to us. It reflects from the prosecution case that in pursuance of an information received by the Joint Commissioner of Police, Ahmedabad City, in April, 2003 about certain youths from Ahmedabad City having gone to take training from terrorist organization in

Pakistan so as to take a revenge of the loss of lives caused to the Muslim Community after Godhra carnage and also to terrorize the people of another community, investigation was started in the matter. He also got an information that on 3-4-2003 at about 9.30 p.m., some of the boys, who had taken training in Pakistan, were to meet at Parimal Garden, Near Sandesh Chowk, one of whom was having a fire arm with him and, therefore, a watch was arranged and they were arrested and interrogated resulting into revealing the names of 14-15 other persons and, therefore, ultimately offense was registered as C.R.I-No.6 of 2003 with DCB Crime Police Station on 3-4-2003. During the course of investigation, since name of the present appellant has been disclosed as one of the main conspirators and actively involved in the crime in question, search to that effect was carried out and ultimately, the present appellant was

arrested on 15-7-2003. He was produced before the concerned Judge and was remanded to custody for a period upto 30-7-2003. Since further police custody was sought for, he was ordered to be kept under police custody for a further period upto 9-8-2003 and thereafter, he was sent to judicial custody. At the end of investigation, first charge-sheet was submitted qua 39 accused showing other accused as absconding.

8. The appellant thereafter preferred Cri.Misc.Appln.No.2219 of 2004 for releasing on bail. However, it was rejected by the learned Special Judge (POTA), Ahmedabad, vide order 23-8-2004 which is giving rise to the present appeal.

9. For enabling this Court to decide the present appeal, reliance is placed on the following reported decisions:

i) 2000(3) R.C.R. page 844 in the case of Jameel Ahmed Vs. State of Rajasthan;

ii) 2002(5) S.C.C. page 234 in the case of Devendrapal Singh Vs. N.C.T.Delhi;

iii) AIR 1999 S.C. page 2640 in the case of State of Tamil Nadu Vs. Nalini;

iv) 1994(3) S.C.C. page 569 in the case of Kartar Singh Vs. State of Punjab and

v) 2005(11) S.C.C. page 600 in the case of Navjot Sandhu.

10. It is to be noted that while deciding the bail application of the present appellant, even court below has also placed reliance upon above referred judgments except the decision reported in Navjot Sandhu(supra).

11. It is established prima facie that the present appellant accused is one of the prime accused as is reflected in the evidence on record more particularly the statement recorded under Sec.32 of the Act. While recording the statement under the said section, all procedures as required including producing him before the concerned Magistrate

have been followed by the Police Officer. It is also established from the investigation papers that after recording his statement, he has been sent into judicial custody and he never remained in police custody thereafter.

12. In short, facts remain that involvement of the accused with the crime in question is established from his own statement recorded under Sec.32 of the Act and also from the statements of Mustaq Ahmed Abdul Sattar Shaikh, the person working as land and building broker in Sanand Taluka connecting Ahmedabad City, Abdul Rehman @ Chhotalal Ahmedmiya Saiyyed and Tanvir, etc. Same has also been considered by the Court below. Apart from the above, the appellant is closely connected with one of the accused namely, Rasul Patti, who, according to prosecution, is in Pakistan at present. There are evidence showing financial inter-connection between Rasul Party, the present

appellant and Mufti Sufian (Patankia) to the effect that the present appellant has collected money from one Mohmed Saiyed through Tanvir and ultimately handed over to Mufti Sufian and, therefore, it cannot be said that except the statement of the accused under Sec.32 of the Act, there are no other evidence on record. Even court below has also considered the same in the order at pages 15 and 16 and, therefore, same are not being reproduced here again.

13. It is further established that when the appellant was searched, he was found with country made revolver and live cartridges and panchnama and FSL report in this regard were also there on record. Having regard to the aforesaid, we may say that there are ample evidence on record to show that the present appellant is one of the main accused of POTA offence. It is further established from investigation papers, statement recorded

under Sec.32 of the Act and other evidence on record that in past also, he has involved himself in serious criminal activities and hence, there is antecedents qua the appellant including another offense under POTA which itself is a clear indication that he is in the crime world from 1992 onwards. In view of the aforesaid, if he is released on bail, he may not be available for trial. We have also considered the impact on the witnesses and the society and also the punishment that might be awarded. We have also considered that some accused are still absconding and are to be apprehended.

14. We are therefore of the view that the impugned order passed by the learned Special Judge (POTA) is just and proper and no illegality has been committed warranting interference by this Court in this appeal. This appeal is therefore required to be rejected.

15. This appeal is hereby rejected.

16. Since the observations by this Court in this judgment are made for the purpose of deciding this appeal, the same may not prejudice the parties in trial.

(R.P.DHOLAKIA,J.) (M.D.SHAH, J.)

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